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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY**

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Plaintiff,

v.

GATX TERMINALS CORPORATION
Defendant.

No.

CONSENT DECREE

TABLE OF CONTENTS

I. INTRODUCTION 3

II. JURISDICTION..... 4

III. PARTIES BOUND 5

IV. DEFINITIONS..... 5

V. STATEMENT OF FACTS 6

VI. WORK TO BE PERFORMED..... 9

VII. DESIGNATED PROJECT COORDINATORS 11

VIII. PERFORMANCE..... 12

IX. ACCESS 12

X. SAMPLING, DATA REPORTING, AND AVAILABILITY 13

XI. PROGRESS REPORTS..... 13

1	XII.	RETENTION OF RECORDS.....	14
2	XIII.	TRANSFER OF INTEREST IN PROPERTY.....	14
3	XIV.	RESOLUTION OF DISPUTES.....	15
4	XV.	AMENDMENT OF CONSENT DECREE	16
5	XVI.	EXTENSION OF SCHEDULE	17
6	XVII.	ENDANGERMENT	18
7	XVIII.	COVENANT NOT TO SUE	19
8	XIX.	INDEMNIFICATION.....	20
9	XX.	COMPLIANCE WITH APPLICABLE LAWS	20
10	XXI.	REMEDIAL AND INVESTIGATIVE COSTS.....	22
11	XXII.	IMPLEMENTATION OF REMEDIAL ACTION	22
12	XXIII.	FIVE YEAR REVIEW	23
13	XXIV.	PUBLIC PARTICIPATION	23
14	XXV.	DURATION OF DECREE	24
15	XXVI.	CLAIMS AGAINST THE STATE	24
16	XXVII.	EFFECTIVE DATE.....	25
17	XXVIII.	PUBLIC NOTICE AND WITHDRAWAL OF CONSENT.....	25
18	XXIX.	LAND USE RESTRICTIONS.....	25
19	XXX.	CONTRIBUTION PROTECTION.....	26
20	XXXI.	RESERVATION OF RIGHTS	26

Exhibit A: Site Diagram

Exhibit B: Draft Cleanup Action Plan

Exhibit C: Site Access and Operating Procedures

Exhibit D: Restrictive Covenant

Exhibit E: Schedule

Exhibit F: Groundwater Compliance Monitoring Plan

I. INTRODUCTION

A. In entering into this Consent Decree (Decree), the mutual objective of the Washington State Department of Ecology (Ecology), and GATX Terminals Corporation (GATX) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Decree requires GATX to undertake the following remedial action(s):

1. Implement the Cleanup Action Plan (CAP)
2. Provide for public participation
3. Provide Remedial Design (RD)
4. Implement the Groundwater Compliance Monitoring that includes:
 - a. Protection monitoring
 - b. Performance monitoring
 - c. Confirmational monitoring

Ecology has determined that these actions are necessary to protect public health and the environment.

B. The Complaint in this action is being filed simultaneously with this Decree. An answer has not been filed, and there has not been a trial on any issue of fact or law in this case. However, the parties wish to resolve the issues raised by Ecology's Complaint. In addition, the parties agree that settlement of these matters without litigation is reasonable and in the public interest and that entry of this Decree is the most appropriate means of resolving these matters.

C. In signing this Decree, GATX agrees to its entry and agrees to be bound by its terms.

D. By entering into this Decree, the parties do not intend to discharge any other party from any liability it may have with respect to matters alleged in the Complaint. The parties retain the right to seek contribution, indemnity, reimbursement or other recovery, in whole or in part, from any other persons for sums expended under this Decree.

E. This Decree is not an admission of and shall not be construed as proof of liability or responsibility for any releases of hazardous substances or cost for remedial action nor an

1 admission of any facts; provided, however, that GATX shall not challenge the jurisdiction of
2 Ecology in any proceeding to enforce this Decree. GATX had assumed the obligations of
3 Shell Oil Company under Agreed Order No. DE 92 TC-N159 (Agreed Order), and GATX has
4 fully satisfied all requirements of the Agreed Order. This Decree supercedes Agreed Order
5 No. DE-92 TC-N 159F. The Court is fully advised of the reasons for entry of this
6 Decree, and good cause having been shown: IT IS HEREBY ORDERED, ADJUDGED, AND
7 DECREED AS FOLLOWS:

8 **II. JURISDICTION**

9 A. This Court has jurisdiction over the subject matter and over the parties pursuant to
10 Chapter 70.105D RCW, the Model Toxics Control Act (MTCA), and venue is proper in King County.

11 B. Authority is conferred upon the Washington State Attorney General by RCW
12 70.105D.040(4)(a) to agree to a settlement with any potentially liable person if, after public notice and
13 hearing, Ecology finds the proposed settlement would lead to a more expeditious cleanup of hazardous
14 substances. RCW 70.105D.040(4)(b) requires that such a settlement be entered as a consent decree
15 issued by a court of competent jurisdiction.

16 C. Ecology has determined that a release or threatened release of hazardous substances
17 has occurred at the Site that is the subject of this Decree.

18 D. Ecology has given notice to GATX, as set forth in RCW 70.105D.020(15), of
19 Ecology's determination that GATX is a potentially liable person for the Site and that there has been a
20 release or threatened release of hazardous substances at the Site.

21 E. The actions to be taken pursuant to this Decree are necessary to protect public health,
22 welfare, and the environment, AND TO COMPLY WITH MTCA AND CERCLA.

23 F. GATX has agreed to undertake the actions specified in this Decree and consents to the
24 entry of this Decree under the MTCA.
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III. PARTIES BOUND

This Decree shall apply to and be binding upon the signatories to this Decree (parties), their successors and assigns. The undersigned representative of each party hereby certifies that he or she is fully authorized to enter into this Decree and to execute and legally bind such party to comply with the Decree. GATX agrees to undertake all actions required by the terms and conditions of this Decree and not to contest state jurisdiction to enforce this Decree. No change in ownership or corporate status shall alter the responsibility of GATX under this Decree. GATX shall provide a copy of this Decree to all agents, contractors and subcontractors retained to perform work required by this Decree and shall ensure that any contract for such work will be in compliance with this Decree.

IV. DEFINITIONS

Except as specified herein, all definitions in WAC 173-340-200 apply to the terms in this Decree.

A. Site: The Site, owned and operated by GATX, is located at 2720 13th Avenue SW, Seattle, Washington, 98124 and is divided into five distinct areas known as A, B, C, D and E Yards on Harbor Island (Site). The Site is part of the Tank Farm Operable Unit One (OU1) for the Harbor Island Superfund Site. The Site is more particularly described in Exhibit A to this Decree which is a detailed site diagram.

B. Parties: Refers to the Washington State Department of Ecology and GATX.

C. GATX: Refers to GATX Terminals Corporation.

D. Consent Decree or Decree: Refers to this Consent Decree and each of the exhibits to the Decree. All exhibits are by this reference incorporated herein, and are integral and enforceable parts of this Consent Decree. The terms "Consent Decree" or "Decree" shall include all exhibits to the Consent Decree.

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V. STATEMENT OF FACTS

Ecology makes the following finding of facts without any express or implied admissions by GATX.

A. Shell Oil Company owned the Site and operated a petroleum storage and distribution facility there from 1944 until 1994. In 1994, GATX acquired the Site and began to operate the Terminal located there. The Site is divided into five distinct areas known as the A, B, C, D, and E Yards. Two fuel tanker truck loading racks and an administrative office and maintenance building are located in the A Yard. The B and C Yards are used as bulk fuel storage areas. Fifteen above-ground storage tanks are located on the B Yard and six are located in the C Yard. The D Yard is situated between the B and C Yards. Also, the D Yard contains several maintenance buildings and material handling areas. The E Yard once served as a fuel loading rack facility but is currently leased to Chevron Oil Company. B. Ecology files contain the following report: Remedial Investigation, Shell Oil Company Harbor Island Terminal, Seattle, Washington, PACIFIC Environmental Group, Inc., Final 1994 RI Report. Based on the RI Report, Ecology finds as follows:

1. Free-phase hydrocarbons are confirmed to be present on the Site situated at the top of the water table in portions of the A Yard, B Yard and C Yard.
2. Residual hydrocarbons exceeding MTCA methods A and B matrix concentrations are confirmed to be present in the soil at the Site beneath southern portions of the B Yard, the northern portions of the A Yard, and the southern half of the C Yard.
3. Dissolved petroleum hydrocarbons exceeding the Surface Water Quality Standards are confirmed to be present in the groundwater at the Site beneath portions of the, A Yard, B Yard, and C Yard. Dissolved lead and arsenic exceeding the Surface Water Quality Standards are confirmed to be present in the groundwater at the Site beneath portions of the B Yard and C Yard.

1 without undermining the integrity of the tanks next to the excavation areas. The two TPH hot spots
2 designated for excavation to the extent technically practicable in the B Yard subsurface soil are
3 identified in the following locations, 1) SS-28, which is located between tanks 18 and 21, 2) SS-9,
4 which is located southwest of tank 22. This will improve groundwater quality, enhance
5 biodegradation of residual TPH and provide a more timely restoration of the inland portions of the site.
6 The 20,000mg/kg, action level is the EPA Guideline for Corrective Action Plan and Monitored Natural
7 Attenuation Documents.

8 e. Upon completion of the free product removal from the Yard A,
9 conduct subsurface TPH soil confirmation analytical sampling north of A-29 and northwest of A-22,
10 which is northwest and southwest of the Garage Building in the A Yard. TPH hot spots up to 20,000
11 mg/kg are detected to be present at these locations. If the analytical results of the TPH subsurface soil
12 confirmation sampling confirm TPH hot spots to be present at these location, excavate to the extent
13 technically practicable, accessible TPH hot spots using the 20,000 mg/kg action levels in the, A Yard
14 subsurface soils. This will improve groundwater quality, enhance biodegradation of residual TPH and
15 provide a more timely restoration of the inland portions of the site.

16 f. Cap, fixate or excavate surface soils in B and C Yards where metal
17 concentrations exceed 1,000 mg/kg for lead and 32.6 mg/kg for arsenic (EPA ROD for Surface Soils
18 on Harbor Island). This is to prevent direct contact, prevent infiltration to the groundwater, and prevent
19 surface runoff to the bay through storm drains; and

20 g. Implement monitoring program for groundwater quality, institutional
21 controls, and, contingency plans.

22 D. In August, 1995, the United States District Court for Western District of Washington
23 (Civil Action No. 95-01495-Z) entered a Consent Decree (Federal Consent Decree) in *U.S. v. The Port*
24 *of Seattle et al.* relating to claims under the Comprehensive Environmental Response, Compensation
25 and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., involving the Harbor Island Superfund Site.
26

Article I, Paragraph 8 of the Federal Consent Decree identifies operable units within the Harbor Island Superfund Site and recites that the Petroleum Tank Farm Operable Unit is under the management of the Department of Ecology. The Environmental Protection Agency and Ecology have entered into Memorandums of Understanding, dated February 5, 1991 and March 3, 1994, setting forth the duties and responsibilities of each agency with regard to site management and enforcement activities at the Harbor Island Superfund Site.

VI. WORK TO BE PERFORMED

This Decree contains a program designed to protect public health, welfare and the environment from the known release, or threatened release, of hazardous substances at, on, or from the Site. GATX agrees to take the following remedial actions and to conduct all work in accordance with Ch. 173-340 WAC, unless otherwise specifically provided herein. These actions are more specifically described in the Cleanup Action Plan attached as Exhibit B.

A. Task 1: Implement the Cleanup Action Plan (CAP):

1. Implement active and passive point-source extraction of floating product, partial-penetrating down-gradient vertical barrier to stop product migration; Remove free product from the groundwater throughout the Site;
2. Implement dual-phase extraction of product and air sparging;
3. Excavate to the extent technically practicable, accessible TPH hot spots using the action levels of 10,000 mg/kg in the C Yard subsurface soils affected by the December 1996 spill without undermining the integrity of the tanks next to the excavation areas. The location of the seven TPH hot spots designated for excavation to the extent technically practicable in the C Yard subsurface soils are the following, 1) MW-4, SS-17, SS-18, which is southeast of tank 44, 2) SS-2, which is northwest of tank 44, 3) S-6, which is northwest of tank 37, 4) SS-2 and SS-13, which is between tanks 42 and 39, 5) S-5 and S-8, which is between tanks 35 and 37, 6) S-10, which is north of tank 35, 7) S-12, which is southwest of tank 35. Excavate to the extent

1 technically practicable, accessible TPH hot spots using the action levels of 20,000 mg/kg in the B Yard
2 subsurface soils affected by historical spills without undermining the integrity of the tanks next to the
3 excavation areas. The location of the two TPH hot spots designated for excavation to the extent
4 technically practicable in the B Yard subsurface soil are the following, 1) SS-28, which is located
5 between tanks 18 and 21, 2) SS-9, which is located southwest of tank 22. Upon completion of
6 the free product removal from the Yard A, conduct subsurface TPH soil confirmation analytical
7 sampling north of A-29 and northwest of A-22, which is northwest and southwest of the Garage
8 Building in the A Yard. TPH hot spots up to 20,000 mg/kg are detected to be present at these
9 locations. If the analytical results of the TPH subsurface soil confirmation sampling confirm TPH hot
10 spots to be present at these location, excavate to the extent technically practicable, accessible TPH hot
11 spots using the 20,000 mg/kg action levels in the, A Yard subsurface soils. These actions required for
12 the A, B, and C Yards will improve groundwater quality, enhance biodegradation of the residual TPH
13 and provide a timely restoration of the affected areas;

14 4. Cap, fixate or excavate surface soils in B and C Yards where lead and arsenic
15 concentrations exceed 1000 mg/kg and 32.6 mg/kg, respectively (EPA ROD for Harbor Island Surface
16 Soils);

17 5. Implement monitoring program for groundwater quality;

18 6. Implement institutional controls and Restrictive Covenant attached hereto as
19 Exhibit D; and

20 7. Implement contingency plans, if necessary.

21 B. Task 2: Provide for public participation.

22 C. Task 3: Provide Remedial Design (RD).

23 D. Task 4: Implement the Compliance Groundwater Monitoring Program attached hereto
24 as Exhibit F, which includes:

25 1. Protection monitoring;

2. Performance monitoring;
3. Confirmation monitoring.

E. Task 5: Implement Schedule attached hereto as Exhibit E.

F. GATX agrees not to perform any remedial actions on the Site that are inconsistent with the remedial actions required under this Consent Decree.

VII. DESIGNATED PROJECT COORDINATORS

The project coordinator for Ecology is:

Nnamdi Madakor, Senior Hydrogeologist
Washington State Department of Ecology
Northwest Regional Office
3190 160th Avenue SE
Bellevue, WA 98008-5452
(425) 649-7112

The project coordinator for GATX is:

Eric J. Conard, REA
GATX Terminals Corporation
1363 N. Gaffey St.
San Pedro, CA 90731-1323
(310) 518-7746

Each project coordinator shall be responsible for overseeing the implementation of this Decree. The Ecology project coordinator will be Ecology's designated representative at the Site. To the maximum extent possible, communications between Ecology and GATX and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Decree, shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the remedial work required by this Decree. The project coordinators may agree to minor modifications to the work to be performed without formal amendments to this Decree. Minor modifications will be documented in writing by Ecology.

1 Each party may change its respective project coordinator. Written notification shall be given to
2 the other parties at least ten (10) days prior to the change.

3 **VIII. PERFORMANCE**

4 All work performed pursuant to this Decree shall be under the direction and supervision, as
5 necessary, of a professional engineer or hydrogeologist, or equivalent, with experience and expertise in
6 hazardous waste site investigation and cleanup. Any construction work must be under the supervision
7 of a professional engineer. GATX shall notify Ecology in writing as to the identity of such engineer(s)
8 or hydrogeologist(s), or others and of any contractors and subcontractors to be used in carrying out the
9 terms of this Decree, in advance of their involvement at the Site. GATX may replace its selected
10 project coordinator upon written notice to Ecology.

11 **IX. ACCESS**

12 Ecology or any Ecology-authorized representatives shall have the authority to enter and freely
13 move about all property at the Site at all reasonable times for the purposes of, inter alia: inspecting
14 records, operation logs, and contracts related to the work being performed pursuant to this Decree;
15 reviewing GATX's progress in carrying out the terms of this Decree; conducting such tests or
16 collecting such samples as Ecology may deem necessary; using a camera, sound recording, or other
17 documentary type equipment to record work done pursuant to this Decree; and verifying the data
18 submitted to Ecology by GATX. Without limitation on Ecology's rights under this section, Ecology
19 will provide GATX advance notice of its entry onto the Site when feasible. All parties with access to
20 the Site pursuant to this paragraph shall comply with Site Access and Operating Procedures, attached
21 hereto as Exhibit C. Ecology shall make available to GATX the results of all sampling, laboratory
22 reports, videos and other test results generated by Ecology or on its behalf.

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X. SAMPLING, DATA REPORTING, AND AVAILABILITY

GATX shall make available to Ecology the results of all sampling, laboratory reports, and/or test results generated by GATX, or on its behalf, in the implementation of this Decree and shall submit these results in accordance with Section XI of this Decree.

In accordance with WAC 173-340-840(5), ground water sampling data shall be submitted according to the requirements that will be established in the Groundwater Compliance Monitoring Program, Exhibit F.

Each party shall allow split or replicate samples to be taken by the other and shall provide 5 working days notice before conducting any sampling activities.

XI. PROGRESS REPORTS

GATX shall submit to Ecology written progress reports that describe the actions taken to implement the requirements of this Decree. The progress report shall be prepared no more frequently than set forth in the following schedule:

- Quarterly during remedial design activities;
- Monthly during construction phase activities;
- Monthly for the first quarter after remedial system startup.

The frequency of progress reports to be submitted following the first quarter after remedial system startup shall be established in the Groundwater Compliance Monitoring Program. Progress reports shall include the following:

- A. A list of on-site activities that have taken place during the reporting period;
- B. Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests;
- C. Description of all deviations from the schedule (Section VI, Work To Be Performed: Task 5) during the current reporting period and any planned deviations in the upcoming reporting period;

1 D. For any deviations in schedule, a plan for recovering lost time and maintaining
2 compliance with the schedule;

3 E. All raw data (including laboratory analysis) received by GATX_during the past month
4 and an identification of the source of the sample; and

5 F. A list of deliverables for the upcoming month if different from the schedule.

6 All progress reports shall be submitted by the fifteenth day of the reporting period in which
7 they are due after the effective date of this Decree. Unless otherwise specified, progress reports and
8 any other documents submitted pursuant to this Decree shall be sent to Ecology's project coordinator.

9 **XII. RETENTION OF RECORDS**

10 GATX shall preserve, during the pendency of this Decree and for ten (10) years from the date
11 this Decree is no longer in effect as provided in Section XXV, all records, reports, documents, and
12 underlying data in its possession relevant to the implementation of this Decree and shall insert in
13 contracts with project contractors and subcontractors a similar record retention requirement. Upon
14 request of Ecology, GATX shall make all non-archived, non-privileged records available to Ecology
15 and allow access for review. All archived non-privileged records shall be made available to Ecology
16 within a reasonable period of time.

17 **XIII. TRANSFER OF INTEREST IN PROPERTY**

18 Prior to any voluntary or involuntary conveyance or relinquishment of any legal or equitable
19 interest in all or any portion of the Site, GATX shall provide for continued operation and maintenance
20 of any containment system, treatment system, and monitoring system installed or implemented
21 pursuant to this Decree.

22 Prior to transfer of any legal or equitable interest in all or any portion of the property, and
23 during the effective period of this Decree, GATX shall serve a copy of this Decree upon any
24 prospective purchaser, lessee, transferee, assignee, or other successor in interest of the property; and, at
25 least thirty (30) days prior to any transfer, GATX shall notify Ecology of said contemplated transfer.
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XIV. RESOLUTION OF DISPUTES

A. In the event a dispute arises as to an approval, disapproval, payment obligation, proposed modification or other decision or action by Ecology's project coordinator, the parties shall utilize the dispute resolution procedure set forth below.

1. Upon receipt of the Ecology project coordinator's decision, GATX has fourteen (14) days within which to notify Ecology's project coordinator of its objection to the decision.

2. The parties' project coordinators shall then confer in an effort to resolve the dispute. If the project coordinators cannot resolve the dispute within fourteen (14) days, Ecology's project coordinator shall issue a written decision.

3. GATX may then request Ecology management review of the decision. This request shall be submitted in writing to the Toxics Cleanup Program Manager within seven (7) days of receipt of Ecology's project coordinator's decision.

4. Ecology's Program Manager shall conduct a review of the dispute and shall issue a written decision regarding the dispute within thirty (30) days of GATX request for review. The Program Manager's decision shall be Ecology's final decision on the disputed matter.

B. If Ecology's final written decision is unacceptable to GATX, the parties may, by mutual agreement, submit the dispute to a neutral mediator. If the parties reach agreement as a result of the mediation, they shall jointly prepare a written resolution of the dispute immediately following the mediation session. If the parties fail to reach agreement as a result of the mediation, then Ecology shall, within thirty (30) days after the conclusion of the mediation, issue a written statement either reaffirming its original decision or setting forth a new decision. GATX has the right to submit the dispute to the Court for resolution within thirty (30) days after any of the following: (i) GATX receives written notice that Ecology does not agree to submit the dispute to mediation; (ii) after mediation, GATX receives a written statement from Ecology that is unacceptable to GATX; or (iii) Ecology fails to issue the final

1 decision described earlier in this paragraph. The parties agree that one judge should retain jurisdiction
2 over this case and shall, as necessary, resolve any dispute arising under this Decree.

3 C. For disputes that involve Ecology's investigative and remedial decisions, and others
4 covered by RCW 70.105D.060, the standard of review shall be arbitrary and capricious. For all other
5 disputes, the court shall decide the standard of review.

6 D. The parties agree to only utilize the dispute resolution process in good faith and agree
7 to expedite, to the extent possible, the dispute resolution process whenever it is used. Where either
8 party utilizes the dispute resolution process in bad faith or for purposes of delay, the other party may
9 seek sanctions.

10 Implementation of these dispute resolution procedures shall not provide a basis for delay of any
11 activities required in this Decree, unless Ecology agrees in writing to a schedule extension or the Court
12 so orders.

13 **XV. AMENDMENT OF CONSENT DECREE**

14 Except for an extension granted pursuant to Section XVI below or technical revisions to
15 Section VI or Exhibit B affecting the nature or scope of remedial work, this Decree may only be
16 amended by a written stipulation among the parties to this Decree that is entered by the Court or by
17 order of the Court. Such amendment shall become effective upon entry by the Court. Agreement to
18 amend shall not be unreasonably withheld by any party to the Decree.

19 GATX shall submit any request for an amendment to Ecology for approval. Ecology shall
20 indicate its approval or disapproval in a timely manner after the request for amendment is received. If
21 the amendment to the Decree is substantial, Ecology will provide public notice and opportunity for
22 comment. Reasons for the disapproval shall be stated in writing. If Ecology does not agree to any
23 proposed amendment, the disagreement may be addressed through the dispute resolution procedures
24 described in Section XIV of this Decree. Technical revisions to Section VI or Exhibit B, affecting the
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1 nature or scope of remedial work, may be made by mutual written agreement of the parties without
2 approval of the court.

3 **XVI. EXTENSION OF SCHEDULE**

4 A. An extension of schedule shall be granted only when a request for an extension is
5 submitted in a timely fashion, generally at least 15 days prior to expiration of the deadline for which the
6 extension is requested, and good cause exists for granting the extension. All extensions shall be
7 requested in writing. The request shall specify the reason(s) the extension is needed.

8 An extension shall only be granted for such period of time as Ecology determines is reasonable
9 under the circumstances. A requested extension shall not be effective until approved by Ecology or the
10 Court. Ecology shall act upon any written request for extension in a timely fashion. It shall not be
11 necessary to formally amend this Decree pursuant to Section XV when a schedule extension is granted.

12 B. The burden shall be on GATX to demonstrate that the request for such extension has
13 been submitted in a timely fashion and that good cause exists for granting the extension. Good cause
14 includes, but is not limited to, the following.

15 1. Circumstances beyond the reasonable control and despite the due diligence of
16 GATX including delays caused by unrelated third parties or Ecology, such as (but not limited to)
17 delays by Ecology in reviewing, approving, or modifying documents submitted by GATX; or

18 2. Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or
19 other unavoidable casualty; or

20 3. Endangerment as described in Section XVII; or

21 4. Other circumstances deemed by Ecology to be exceptional, extraordinary, or
22 otherwise necessary to protect the environment or public interest.

23 However, neither increased costs of performance of the terms of the Decree nor changed
24 economic circumstances shall be considered circumstances beyond the reasonable control of GATX.

1 C. Ecology may extend the schedule for a period not to exceed ninety (90) days, except
2 where an extension is needed as a result of:

3 1. Delays in the issuance of a necessary permit which was applied for in a timely
4 manner; or

5 2. Other circumstances deemed exceptional or extraordinary by Ecology; or
6 otherwise necessary to protect public health or the environment; or

7 3. Endangerment as described in Section XVII.

8 Ecology shall give GATX written notification in a timely fashion of any extensions granted
9 pursuant to this Decree. Ecology shall not unreasonably withhold approval of requested extensions.

10 **XVII. ENDANGERMENT**

11 In the event Ecology determines that activities implementing or in compliance with this Decree,
12 or any other circumstances or activities, are creating or have the potential to create a danger to the
13 health or welfare of the people on the Site or in the surrounding area or to the environment, Ecology
14 may order GATX to stop further implementation of this Decree for such period of time as needed to
15 abate the danger or may petition the Court for an order as appropriate. During any stoppage of work
16 under this section, the obligations of GATX with respect to the work under this Decree which is
17 ordered to be stopped shall be suspended and the time periods for performance of that work, as well as
18 the time period for any other work dependent upon the work which is stopped, shall be extended,
19 pursuant to Section XVI of this Decree, for such period of time as Ecology determines is reasonable
20 under the circumstances.

21 In the event GATX determines that activities undertaken in furtherance of this Decree or any
22 other circumstances or activities are creating an endangerment to the people on the Site or in the
23 surrounding area or to the environment, GATX may stop implementation of this Decree for such
24 period of time necessary for Ecology to evaluate the situation and determine whether GATX should
25 proceed with implementation of the Decree or whether the work stoppage should be continued until the
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1 danger is abated. GATX shall notify Ecology's project coordinator as soon as possible, but no later
2 than twenty-four (24) hours after such stoppage of work, and thereafter provide Ecology with
3 documentation of the basis for the work stoppage. If Ecology disagrees with GATX's determination, it
4 may order GATX to resume implementation of this Decree. If Ecology concurs with the work
5 stoppage, GATX's obligations shall be suspended and the time period for performance of that work, as
6 well as the time period for any other work dependent upon the work which was stopped, shall be
7 extended, pursuant to Section XVI of this Decree, for such period of time as Ecology determines is
8 reasonable under the circumstances. Any disagreements arising under this clause shall be resolved
9 through the dispute resolution procedures in Section XIV.

10 **XVIII. COVENANT NOT TO SUE**

11 A. In consideration of GATX's compliance with the terms and conditions of this Decree,
12 Ecology covenants that compliance with this Decree shall stand in lieu of any and all administrative,
13 legal, and equitable remedies and enforcement actions available to Ecology against GATX for the
14 release or threatened release of hazardous substances covered by the terms of this Decree.

15 B. This covenant is strictly limited in its application to the Site specifically described in
16 Exhibit A and to those hazardous substances that Ecology knows to be located at the Site as of the date
17 of entry of this Decree. This covenant is not applicable to any other hazardous substance or area, and
18 Ecology retains all of its authority relative to such substances and areas.

19 C. In the following circumstances Ecology may exercise its full legal authority to address
20 releases of hazardous substances at the Site notwithstanding the Covenant Not to Sue set forth above:

21 1. If GATX fails to comply with the terms and conditions of this Decree,
22 including all exhibits, and, after written notice of noncompliance and reasonable opportunity for
23 compliance, fails to do it; or

24 2. If factors not known at the time of entry of this Decree, including factors listed
25 in WAC 173-340-420(2), are discovered and Ecology determines, in light of these factors, that further
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1 remedial action is necessary at the Site to protect human health or the environment, provided that, if
2 this paragraph becomes operative, Ecology will allow GATX to propose the further action where such
3 proposal can be made promptly and without endangering human health or the environment; or

4 3. If Ecology determines that conditions at the Site cause an endangerment to
5 human health or the environment, and that actions beyond those required under this Decree are
6 necessary.

7 D. The Covenant Not to Sue set forth above shall have no applicability whatsoever to

8 1. Criminal liability;

9 2. Any liability for damages to natural resources;

10 3. Any Ecology action against potentially liable persons not a party to this Decree.

11 **XIX. INDEMNIFICATION**

12 GATX agrees to indemnify and save and hold the State of Washington, its employees,
13 and agents harmless from any and all claims or causes of action for death or injuries to persons or for
14 loss or damage to property arising from or on account of negligent acts or omissions of GATX, its
15 officers, employees, agents, or contractors in entering into and implementing this Decree. However,
16 GATX shall not indemnify the State of Washington nor save nor hold its employees and agents
17 harmless from any claims or causes of action arising out of the intentional misconduct or negligent acts
18 or omissions of the State of Washington, or the employees or agents of the State, in implementing the
19 activities pursuant to this Decree.

20 **XX. COMPLIANCE WITH APPLICABLE LAWS**

21 A. All actions carried out by GATX pursuant to this Decree shall be done in accordance
22 with all applicable federal, state, and local requirements, including requirements to obtain necessary
23 permits, except as provided in Paragraph B. of this section.
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1 B. Exhibit B, the Cleanup Action Plan, will include the substantive requirements of
2 chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW and of any laws requiring or authorizing
3 local government permits or approvals for the remedial action under this Decree.

4 GATX has a continuing obligation to determine whether additional permits or approvals
5 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this
6 Decree. In the event either GATX or Ecology determines that additional permits or approvals
7 addressed in RCW 70.105D.090(1) would otherwise be required for the remedial action under this
8 Decree, it shall promptly notify the other party of this determination. Ecology shall determine whether
9 Ecology or GATX shall be responsible to contact the appropriate state and/or local agencies. If
10 Ecology so requires, GATX shall promptly consult with the appropriate state and/or local agencies and
11 provide Ecology with written documentation from those agencies of the substantive requirements those
12 agencies believe are applicable to the remedial action. Ecology shall make the final determination on
13 the additional substantive requirements that must be met by GATX and on how GATX must meet
14 those requirements. Ecology shall inform GATX in writing of these requirements. Once established
15 by Ecology, the additional requirements shall be enforceable requirements of this Decree. GATX shall
16 not begin or continue the remedial action potentially subject to the additional requirements until
17 Ecology makes its final determination.

18 Ecology shall ensure that notice and opportunity for comment is provided to the public and
19 appropriate agencies prior to establishing the substantive requirements under this section.

20 C. Pursuant to RCW 70.105D.090(2), in the event Ecology determines that the exemption
21 from complying with the procedural requirements of the laws referenced in RCW 70.105D.090(1)
22 would result in the loss of approval from a federal agency which is necessary for the State to administer
23 any federal law, the exemption shall not apply and GATX shall comply with both the procedural and
24 substantive requirements of the laws referenced in RCW 70.105D.090(1), including any requirements
25 to obtain permits.
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1 D. In implementing this Decree for purposes such as sampling, it is contemplated that
2 GATX may remove limited quantities of soil, groundwater, and other materials (collectively,
3 "Materials") from real property within or adjacent to the Site. Any removal shall be done in
4 compliance with all applicable laws as required by this Section XX. It is agreed that any disposition of
5 the Materials by GATX, including documents generated pursuant to such disposition, shall not be
6 deemed to be an admission by such party of liability for purposes of the Model Toxics Control Act.

7 **XXI. REMEDIAL AND INVESTIGATIVE COSTS**

8 A. GATX agrees to pay costs incurred by Ecology pursuant to this Decree which have not
9 been previously paid. These costs shall include work performed by Ecology or its contractors for, or
10 on, the Site under Ch. 70.105D RCW, both prior to and subsequent to the issuance of this Decree, for
11 investigations, remedial actions, Cleanup Action Plan and Decree preparation, negotiations, oversight
12 and administration. Ecology costs shall include costs of direct activities and support costs of direct
13 activities as defined in WAC 173-340-550(2). GATX agrees to pay the required amount within ninety
14 (90) days of receiving from Ecology an itemized statement of costs that includes a summary of costs
15 incurred, an identification of involved staff, and the amount of time spent by involved staff members on
16 the project. A general statement of work performed will be provided upon request and GATX has
17 submitted such a request to Ecology. Itemized statements and costs shall be prepared quarterly.
18 Failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement will result in
19 interest charges as allowed by law. GATX reserves the right to review and approve any charges prior
20 to payment. Any dispute regarding remedial and investigation costs for the Site shall be subject to
21 dispute resolution pursuant to Section XIV. GATX reserves the right to pay the undisputed portion of
22 an invoice and not pay the disputed portion.

23 **XXII. IMPLEMENTATION OF REMEDIAL ACTION**

24 If Ecology determines that GATX has failed without good cause to implement the
25 remedial action, Ecology may, after notice and reasonable opportunity to GATX to cure the
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1 failure, perform any or all portions of the remedial action that remain incomplete. If Ecology
2 performs all or portions of the remedial action because of GATX's failure to comply with its
3 obligations under this Decree, GATX shall reimburse Ecology for the costs of doing such work in
4 accordance with Section XXI, provided that GATX is not obligated under this section to
5 reimburse Ecology for costs incurred for work inconsistent with or beyond the scope of
6 this Decree.

7 **XXIII. FIVE YEAR REVIEW**

8 As remedial action, including ground water monitoring, continues at the Site, the parties agree
9 to review the progress of remedial action at the Site, and to review the data accumulated as a result of
10 site monitoring as often as is necessary and appropriate under the circumstances or as agreed upon in
11 the Compliance Groundwater Monitoring Program for the Site. The parties agree to meet to discuss
12 the Site status every five years upon request from Ecology, or at GATX's request. Ecology reserves
13 the right to require further remedial action at the Site under appropriate circumstances. This provision
14 shall remain in effect for the duration of the Decree.

15 **XXIV. PUBLIC PARTICIPATION**

16 Ecology shall maintain the responsibility for public participation at the Site. However, GATX
17 shall cooperate with Ecology and, if agreed to by Ecology, shall:

18 A. Prepare drafts of public notices and fact sheets at important stages of the remedial
19 action, such as the submission of engineering design reports. Ecology will finalize (including editing if
20 necessary) and, after receiving and considering comments from GATX, distribute such fact sheets and
21 prepare and distribute public notices of Ecology's presentations and meetings;

22 B. Notify Ecology's project coordinator prior to the preparation of all press releases and
23 fact sheets, and before major meetings with the interested public and local governments. Likewise,
24 Ecology shall notify and consult with GATX prior to the issuance of all press releases and fact sheets,
25 and before major meetings with the interested public and local governments;
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1 C. Participate in public presentations on the progress of the remedial action at the Site.
2 Participation may be through attendance at public meetings to assist in answering questions, or as a
3 presenter; and

4 D. Provide Ecology with copies of documents to be placed in information repositories to
5 be located at the Seattle Public Library, Downtown Branch, Magazines, Newspapers and Government
6 Publications Dept., 1000 4th Ave., Seattle, Washington 98104 and Ecology's Northwest Regional
7 Office at 3190 160th Avenue SE, Bellevue, Washington 98008-5452. Copies of all public notices, fact
8 sheets, and press releases; all quality assured ground water, surface water, soil sediment, and air
9 monitoring data; remedial actions plans, supplemental remedial planning documents, and all other
10 similar documents relating to performance of the remedial action required by this Decree shall be
11 promptly placed in these repositories.

12 **XXV. DURATION OF DECREE**

13 A. This Decree shall remain in effect and the remedial program described in the Decree
14 shall be maintained and continued until GATX has received written notification from Ecology that the
15 requirements of this Decree have been satisfactorily completed. Ecology shall issue such notification
16 within sixty (60) days after the requirements of this Decree have been satisfactorily completed.
17 Thereafter the parties within thirty (30) days shall jointly request that the Court vacate this Consent
18 Decree.

19 B. Upon completion of each action specified in the Final CAP, Ecology shall issue a
20 Certificate of Completion within sixty (60) days after such action has been completed.

21 **XXVI. CLAIMS AGAINST THE STATE**

22 GATX hereby agrees that it will not seek to recover any costs incurred in implementing the
23 remedial action required by this Decree from the Washington Department of Ecology; State of
24 Washington or any of its agencies, with the exception of the Department of Natural Resources; and
25 further, that GATX will make no claim against the State Toxics Control Account or any Local Toxics
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1 Control Account for any costs incurred in implementing this Decree. Except as provided above,
2 however, GATX expressly reserves its right to seek to recover any costs incurred in implementing this
3 Decree from any other potentially liable person. GATX further reserves its right to make a claim
4 against the State or Local Toxics Control Account for the costs incurred in remediating hazardous
5 substances released as a result of third-party offsite activities, but only if future amendments to MTCA
6 or applicable regulations or guidelines allow for such claims, and operate retroactively. No
7 determination has been made whether such a claim, if filed, would be valid, and both parties agree that
8 any claim would have to be evaluated under the law in effect at the time the claim was made.

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10 **XXVII. EFFECTIVE DATE**

11 This Decree is effective upon the date it is entered by the Court.

12 **XXVIII. PUBLIC NOTICE AND WITHDRAWAL OF CONSENT**

13 This Decree has been the subject of public notice and comment under RCW
14 70.105D.040(4)(a). As a result of this process, Ecology has found that this Decree will lead to a more
15 expeditious cleanup of hazardous substances at the Site.

16 If the Court withholds or withdraws its consent to this Decree, it shall be null and void at the
17 option of any party and the accompanying Complaint shall be dismissed without costs and without
18 prejudice. In such an event, no party shall be bound by the requirements of this Decree.

19 **XXIX. LAND USE RESTRICTIONS**

20 GATX agrees that the Restrictive Covenant, Exhibit D, shall be recorded with the office
21 of the King County Auditor within 10 days of the entry of this Decree and shall restrict future
22 uses of the Site. With Ecology's prior written approval, and after completion of the remedial
23 action required by this Decree, GATX, or its successor(s), may record an instrument that provides
24 that the Restrictive Covenant provided in Exhibit D shall no longer limit uses of the Site or be of
25 any further force or effect.
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XXX. CONTRIBUTION PROTECTION

A. With regard to actions, claims, counterclaims, or cross-claims for contribution against GATX for Matters Addressed in this Consent Decree, the parties hereto agree that GATX is entitled to contribution protection from any actions, claims, or cross-claims pursuant to MTCA, RCW 70.105D.080, or any other federal or state claim or cross-claim seeking, under other theories, substantially similar relief, to the fullest extent allowed by MTCA, RCW 70.105D.080. The contribution protection conferred in this section shall not be frustrated by the use of non-MTCA theories to seek relief in the nature of contribution or indemnification. For the purpose of this paragraph, "Matters Addressed" shall include all past and future investigation and remedial measures taken at the Site by GATX or Shell Oil Company pursuant to this Consent Decree or under Ecology oversight.

B. The response costs paid by GATX under this Decree shall not in any way constitute an admission as to an appropriate allocation of liability, if any, at the Site. This Section XXX shall apply to, but is not limited to, successors in interest who assume obligations under this Decree.

XXXI. RESERVATION OF RIGHTS

By agreeing to this Decree, GATX and Ecology agree to abide by its terms. The execution and performance of the Decree is not, however, an admission by GATX of any fact or liability for any purpose other than as a foundation for the entry of this Decree. GATX's performance under the Decree is undertaken without waiver of or prejudice to any claims or defenses whatsoever that may be asserted in the event of further administrative proceedings or litigation not associated with, or related to, this Decree.

**STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY**

**STATE OF WASHINGTON
ATTORNEY GENERAL'S OFFICE**

By: _____
JAMES PENDOWSKI
Program Manager

By: _____
KEN LEDERMAN
WSBA #

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Toxics Cleanup Program

Assistant Attorney General

GATX TERMINALS CORPORATION

By: _____

Dated this _____ day of _____, 1999.

JUDGE
King County Superior Court